

Laura S. Mann, Esq.
LAW OFFICES OF LAURA S. MANN, LLC
179 Cahill Cross Road, Suite 205
West Milford, New Jersey 07480
973-506-4881
Attorney for Debtors

**U.S. BANKRUPTCY COURT
DISTRICT OF NEW JERSEY (NEWARK)**

In Re:

Marlon Ernesto Murcia and
Erina Murcia,

Debtors.

**Case No.: 12-35963-RG
Chapter 7**

**NOTICE OF MOTION TO FIND SAINT
BARNABAS MEDICAL CENTER a/k/a
BARNABAS HEALTH AND RUBIN AND RAINE
OF NEW JERSEY, LLC IN WILLFUL VIOLATION
OF THE AUTOMATIC STAY UNDER § 362(a)(6),
FOR CONTEMPT OF COURT AND FOR
SANCTIONS UNDER § 362(k)**

TO: ALL PARTIES-IN-INTEREST

PLEASE TAKE NOTICE that on Monday, March 25, 2013, at 10:00 a.m. the undersigned, attorney for Marlon Ernesto Murcia and Erina Murcia ("Debtors") will move before the Honorable Rosemary Gambardella at the Martin Luther King Jr. Federal Building & Courthouse, 50 Walnut Street, 3rd Floor, Newark NJ 07102 in Courtroom E, for a finding of a Willful Violation of the Automatic Stay, for Contempt and for Sanctions by Saint Barnabas Medical Center a/k/a Barnabas Health ("Barnabas") and Rubin and Raine of New Jersey, LLC ("R&R LLC").

PLEASE TAKE FURTHER NOTICE that Debtors have submitted a proposed form of Order in accordance with D.N.J. LBR 9013-1(a).

PLEASE TAKE FURTHER NOTICE that, in accordance with D.N.J. LBR 9013-2, Debtors have not submitted a brief since the Motion does not present any novel or complicated issues of fact or law.

PLEASE TAKE FURTHER NOTICE that responses, if any, to the relief sought shall conform with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, shall be filed with the Clerk of the Bankruptcy Court, P.O. Box 1352, Newark NJ 07101 and, pursuant to Local Bankruptcy Rule 9013-1(d), shall be served upon undersigned so as to be received no later than seven (7) days prior to the return date.

PLEASE TAKE FURTHER NOTICE that unless responses are timely filed and served, the Motion shall be deemed uncontested in accordance with Local Bankruptcy Rule 9013-1(a), and the relief requested may be granted without further notice or hearing.

Dated: February 18, 2013

LAW OFFICES OF LAURA S. MANN, LLC

/s/ Laura S. Mann

By: Laura S. Mann, Esq.

179 Cahill Cross Road, Suite 205

West Milford, New Jersey 07480

973-506-4881

Attorney for Debtors

Laura S. Mann, Esq.
LAW OFFICES OF LAURA S. MANN, LLC
179 Cahill Cross Road, Suite 205
West Milford, New Jersey 07480
973-506-4881
Attorney for Debtors

**U.S. BANKRUPTCY COURT
DISTRICT OF NEW JERSEY (NEWARK)**

In Re:

Marlon Ernesto Murcia and
Erina Murcia,

Debtors.

Case No.: 12-35963-RG

Chapter 7

**Return Date: March 25, 2013
10:00 a.m.**

DEBTORS' MOTION TO FIND SAINT BARNABAS MEDICAL CENTER a/k/a BARNABAS HEALTH AND RUBIN AND RAINE OF NEW JERSEY, LLC IN WILLFUL VIOLATION OF THE AUTOMATIC STAY UNDER § 362(a)(6), FOR CONTEMPT OF COURT AND FOR SANCTIONS UNDER § 362(k)

TO: Honorable Rosemary Gambardella, United States Bankruptcy Judge

COME NOW, Marlon Ernesto Murcia and Erina Murcia, Debtors, by and through their undersigned attorney of record, and file this Motion to Find Saint Barnabas Medical Center a/k/a Barnabas Health and Rubin and Raine of New Jersey, LLC in Willful Violation of the Automatic Stay under § 362(A)(6), for Contempt of Court and for Sanctions Under § 362(k) ("Motion"), and as grounds for this Motion would state as follows:

1. On October 26, 2012, Debtors, Marlon Ernesto Murcia and Erina Murcia ("Debtors"), filed a voluntary Chapter 7 Petition ("Petition") in the Bankruptcy Court for the District of New Jersey, Newark Division.

2. Included in Schedule F of the Debtors' Petition was the debt allegedly owed to Saint Barnabas Medical Center a/k/a Barnabas Health ("Barnabas") in the approximate amount

of \$8,729.84. Attached hereto as **EXHIBIT A** is a true and correct copy of Schedule F.¹

3. The attached Creditor Mailing Matrix ("Matrix") shows that Barnabas was properly listed for service at the address provided in its billing: PO Box 903, Oceanport NJ 07757-0903. Attached hereto as **EXHIBIT B** is a true and correct copy of the Creditor Mailing Matrix.

4. The Matrix also lists Rubin and Raine of New Jersey, LLC, A Receivables Management Company ("R&R LLC").

5. On November 9, 2012, the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines ("341 Notice") was served upon all parties-in-interest, including Barnabas and R&R LLC, via first class mail served by the Bankruptcy Noticing Center Notice. Attached hereto as **EXHIBIT C** is a true and correct copy of the 341 Notice.

6. The 341 Meeting of Creditors meeting was held and concluded in Newark on November 26, 2012. It should be noted that no creditors or their representatives appeared at the Meeting of Creditors.

7. On or about December 5, 2012, Debtors received a demand letter from Barnabas dated November 29, 2012 ("11/29/2012 Demand Letter") seeking payment of a pre-filing debt as evidenced on the face of the letter. In the Demand Letter, Barnabas advised the Debtors that "payment must be received within the next 10 days or we will have no alternative but to follow legal proceedings." Attached hereto as **EXHIBIT D** is a true and correct copy of the 11/29/2012 Demand Letter.

8. On or about December 7, 2012, in response to the 11/29/2012 Demand Letter,

¹ Although Schedule F was later amended to add a creditor; the amendment did not affect Barnabas.

counsel for the Debtors sent a Notice of Bankruptcy Filing and Automatic Stay ("12/7/2012 Notice from Debtors' Counsel"), to Barnabas via facsimile. Counsel advised Barnabas that the 11/29/2012 Demand Letter violated the Automatic Stay and warned that further violations would likely result in a motion seeking sanctions, actual damages, punitive damages, court costs and legal fees. Attached hereto as **EXHIBIT E** is a true and correct copy of the 12/7/2012 Notice from Debtors' Counsel with FAX Confirmation.

9. Despite that warning, on or about January 2, 2013, Debtors received a billing statement and payment coupon from Barnabas, dated December 22, 2012 ("12/22/2012 Billing Statement"), seeking payment of a pre-filing debt as evidenced on the face of the statement, indicating that the account was overdue and requesting immediate payment. Attached hereto as **EXHIBIT F** is a true and correct copy of the 12/22/2012 Billing Statement.

10. At some point following the filing of the Petition, Barnabas, in direct and willful violation of the automatic stay, assigned the Debtors' account to R&R LLC, a collection agency.

11. On January 3, 2013, Debtors received a voicemail ("Collection Message") from 855-277-1313, a number assigned to Barnabas' collection department as evidenced in the 11/29/2012 Demand Letter. Attached hereto as **EXHIBIT G** is a true and correct copy of the screen capture of Debtors' cell phone showing the date and time of the Collection Message.²

12. On or about January 8, 2013, R&R LLC, in direct and willful violation of the automatic stay, sent Debtors a Notice of Default and payment coupon ("1/8/2013 Notice of Default") indicating that the account had been assigned to them for collection and that failure to dispute the validity of the debt or make payment would result in "further collection efforts."

² Debtors recorded the call; Counsel for the Debtors' has retained a copy of the recording.

Attached hereto as **EXHIBIT H** is a true and correct copy of the 1/8/2013 Notice of Default.

13. The actions of Barnabas and R&R LLC show a complete and utter disregard for the protections imposed by the automatic stay.

14. The Chapter 7 Trustee's Report of No Distribution was submitted on December 3, 2012, subsequently, the Order Discharging Debtors was entered on February 1, 2013. Attached hereto as **EXHIBIT I** is a true and correct copy of the Order Discharging Debtors.

15. Under 11 U.S.C. § 362(a)(6), Debtors are protected from creditors that are acting in any capacity to collect, assess, or recover a claim against him that arose before the commencement of the bankruptcy proceedings.

16. 11 U.S.C. § 362(k) states in relevant part: "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

WHEREFORE, Debtors, Marlon Ernesto Murcia and Erina Murcia, request this Court to:

1. Find Saint Barnabas Medical Center a/k/a Barnabas Health in violation of the automatic stay imposed by the present case and in contempt of the Court's Automatic Stay Provision Order.
2. Find Rubin and Raine of New Jersey, LLC in violation of the automatic stay imposed by the present case and in contempt of the Court's Automatic Stay Provision Order.
3. Awarding the Debtors compensatory and punitive damages, plus attorneys' fees and costs pursuant to 11 U.S.C. § 362(k).

Dated: February 18, 2013

LAW OFFICES OF LAURA S. MANN, LLC

179 Cahill Cross Road, Suite 205
West Milford, New Jersey 07480
973-506-4881

/s/ Laura S. Mann
By: Laura S. Mann, Esq.
Attorney for Debtors

CERTIFICATE OF SERVICE

I, Laura S. Mann, certify under penalty of perjury that:

On February 18, 2013, I caused to be served a copy of the Notice of Motion to Find Saint Barnabas Medical Center a/k/a Barnabas Health and Rubin and Raine of New Jersey, LLC in Willful Violation of the Automatic Stay under § 362(A)(6), for Contempt of Court and for Sanctions under § 362(k), Application in Support of the Motion, and Form of Proposed Order to be served via this Court's CM/ECF system, electronic and/or first class mail, postage prepaid upon the persons on the below service list.

Saint Barnabas Medical Center
P.O. Box 903
Oceanport NJ 07757-0903

Rubin and Raine of New Jersey, LLC
PO Box 660
Eatontown NJ 07724-0660

Joseph J. Newman, Chapter 7 Trustee
4 Concord Street
Cranford NJ 07016

Dated: February 18, 2013

LAW OFFICES OF LAURA S. MANN, LLC

/s/ Laura S. Mann

By: Laura S. Mann, Esq.
179 Cahill Cross Road, Suite 205
West Milford, New Jersey 07480
973-506-4881
Attorney for Debtors